



30 SEP 2005

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FISH & NEAVE IP GROUP
ROPES & GRAY LLP
One International Place
Boston, MA 02110-2624

In re Application of
BRORS *et al*
U.S. Application No.: 10/509,275
PCT No.: PCT/EP03/03291
Int. Filing Date: 28 March 2003
Priority Date: 28 March 2002
Attorney Docket No.: VOSS-P01-011
For: METHOD AND SYSTEM FOR
DETERMINING ABSOLUTE MRNA
QUANTITIES

DECISION

This is a decision on the papers filed via facsimile on 08 September 2005. No fee is required.

BACKGROUND

On 27 September 2004, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, appropriate fees paid for a large entity.

On 22 November 2004, applicants purportedly a document titled "Assertion of Small Entity Status Under 37 CFR § 1.27(C) and Request for Refund Under 37 CFR § 1.28." This document was not located in the file.

On 27 June 2005, DO/EO/US mailed a filing receipt and a Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 (Form PCT/DO/EO/903). Applicants were not listed as a small entity on either document.

On 06 July 2005, applicants purportedly filed via facsimile a "Request for Corrected Filing Receipt" which was accompanied by, *inter alia*, a copy of the document requesting small entity status purportedly filed 18 November 2004 along with a date-stamped postcard receipt for those documents. This facsimile was also not located in the file.

On 08 September 2005, applicants filed via facsimile a copy of the documents filed 06 July 2005 and a copy of the "Auto-Reply Facsimile Transmission" received from the USPTO for those documents.

DISCUSSION

The copy of the "Auto-Reply Facsimile Transmission" is sufficient to show that the papers were originally filed via facsimile on 06 July 2005.

Small Entity Status Filed 22 November 2004

The assertion of small entity status purportedly filed 22 November 2004 was not located in the file. MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Here, applicants provided a copy of the date-stamped postcard receipt for documents submitted on 22 November 2004. The postcard receipt clearly identified the application by the application number, docket number and title. The postcard receipt indicates that the following document was received in the USPTO: Assertion of Small Entity Status and request for Refund. The postcard receipt is stamped "OIPE NOV 22 2004" and "DT03 Rec'd PCT/PTO 22 NOV 2004" across its face.

Accordingly, applicants have provided *prima facie* evidence that the small entity assertion was received by the Office on 22 November 2004.

Request for Refund

In the paper originally filed 22 November 2004, applicants requested a refund of one-half the basic national fee. 37 CFR 1.28 (a) states, in part that:

A refund pursuant to § 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. The three-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within three months of the date of payment of, the full fee.

Applicants submitted the change in status to a small entity on 22 November 2004 which is within the three-month time period required as the transmittal letter was filed 27 September 2004.

Therefore, applicants' request for a refund is **GRANTED**.

Request for Corrected Filing Receipt

Applicants also requested that the filing receipt be corrected to show the proper "FIL FEE REC'D," name of assignee, and status as a small entity.

A review of the application shows that the filing receipt mailed 27 June 2005 incorrectly spelled the name of the assignee. Moreover, applicants' status to a small entity changed as a result of this decision and needs to be reflected on both the filing receipt and Form PCT/DO/EO/903.

Accordingly, the filing receipt and Form PCT/DO/EO/903 mailed 27 June 2005 are hereby VACATED.

CONCLUSION

Applicants' request for a refund pursuant to 37 CFR 1.28(a) and request for a corrected filing receipt are GRANTED.

A corrected filing receipt and Form PCT/DO/EO/903 will be mailed with this decision. Counsel's Deposit Account No. 18-1945 has been credited \$605.00.

The above-captioned application will be forwarded to Technology Center 1600 for further processing.



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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/509,275	Benedikt J Brors	VOSS-P01-011

INTERNATIONAL APPLICATION NO.

PCT/EP03/03291

LA. FILING DATE	PRIORITY DATE
03/28/2003	03/28/2002

28120
 FISH & NEAVE IP GROUP
 ROPES & GRAY LLP
 ONE INTERNATIONAL PLACE
 BOSTON, MA 02110-2624

CONFIRMATION NO. 7663

371 WITHDRAWAL NOTICE



OC000000017145089

Date Mailed: 09/29/2005

WITHDRAWAL OF PREVIOUSLY SENT NOTICE

It has come to the attention of the Office that the Notice mailed on 06/27/2005 was sent in error. Please disregard that Notice. The application is complete and will be processed for examination. The Official Filing Receipt is enclosed. We apologize for any inconvenience this has caused.

FREDERICK SMITH

Telephone: (703) 308-9140 EXT 210

PART 1 - ATTORNEY/APPLICANT COPY



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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/509,275	Benedikt J Brors	VOSS-P01-011

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 BOSTON, MA 02110-2624

INTERNATIONAL APPLICATION NO.

PCT/EP03/03291

LA. FILING DATE	PRIORITY DATE
03/28/2003	03/28/2002

CONFIRMATION NO. 7663

371 ACCEPTANCE LETTER



OC000000017145116

Date Mailed: 09/29/2005

NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C 371 AND 37 CFR 1.495

The applicant is hereby advised that the United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495), has determined that the above identified international application has met the requirements of 35 U.S.C. 371, and is ACCEPTED for national patentability examination in the United States Patent and Trademark Office.

The United States Application Number assigned to the application is shown above and the relevant dates are:

05/25/2005

DATE OF RECEIPT OF 35 U.S.C. 371(c)(1), (c)(2) and
 (c)(4) REQUIREMENTS

05/25/2005

DATE OF COMPLETION OF ALL 35 U.S.C. 371
 REQUIREMENTS

A Filing Receipt (PTO-103X) will be issued for the present application in due course. **THE DATE APPEARING ON THE FILING RECEIPT AS THE " FILING DATE" IS THE DATE ON WHICH THE LAST OF THE 35 U.S.C. 371 (c)(1), (c)(2) and (c)(4) REQUIREMENTS HAS BEEN RECEIVED IN THE OFFICE. THIS DATE IS SHOWN ABOVE.** The filing date of the above identified application is the international filing date of the international application (Article 11(3) and 35 U.S.C. 363). Once the Filing Receipt has been received, send all correspondence to the Group Art Unit designated thereon.

The following items have been received:

- Indication of Small Entity Status
- Copy of the International Application filed on 09/27/2004
- Copy of the International Search Report filed on 09/27/2004
- Preliminary Amendments filed on 09/27/2004
- Information Disclosure Statements filed on 09/27/2004
- Oath or Declaration filed on 05/25/2005
- Small Entity Statement filed on 11/18/2004
- U.S. Basic National Fees filed on 09/27/2004
- Priority Documents filed on 09/27/2004

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

FREDERICK SMITH

Telephone: (703) 308-9140 EXT 210

PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/903 (371 Acceptance Notice)



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
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 Alexandria, Virginia 22313-1450
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/509,275	05/25/2005	1653	670	VOSS-P01-011	3	16	2

CONFIRMATION NO. 7663

28120
 FISH & NEAVE IP GROUP
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 ONE INTERNATIONAL PLACE
 BOSTON, MA 02110-2624

FILING RECEIPT



OC000000017145115

Date Mailed: 09/29/2005

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Benedikt J Brors, Heidelberg, GERMANY;
 Nicole Hauser, Heidelberg, GERMANY;
 Martin Vingron, Berlin, GERMANY;

Assignment For Published Patent Application

Deutsches Krebsforschungszentrum, Heidelberg, GERMANY

Power of Attorney: The patent practitioners associated with Customer Number 28120.

Domestic Priority data as claimed by applicant

This application is a 371 of PCT/EP03/03291 03/28/2003

Foreign Applications

EUROPEAN PATENT OFFICE (EPO) 02007267.4 03/28/2002

If Required, Foreign Filing License Granted: 09/28/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US10/509,275**

Projected Publication Date: 11/17/2005

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Method and system for determining absolute mrna quantities

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER Title 35, United States Code, Section 184 Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier

license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).